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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/206,782	12/07/1998	MICHAEL R. PEEVEY	32277.0100	5956

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EXAMINER
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SHERR, CRISTINA O

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 08/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/206,782

Applicant(s)

PEEVEY, MICHAEL R.

Examiner

Cristina Owen Sherr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-39 is/are pending in the application.
- 4a) Of the above claim(s) 10-15 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 21-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This office action is in response to Applicant's amendment filed on 09/24/2001. Claims 10 – 20 are canceled. Claim 1 is amended. Claims 21 – 39 are added. Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are presented for examination.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031) in view of Saar (US 6,161,100). Kincheloe discloses a method of remotely monitoring the consumption and use of a utility, allowing for calculating billing data using metering data and generating bills (Col. 1 – 2). Kincheloe does not, however, disclose a method of monitoring multiple consumer sites. Saar, however, does disclose a system specifically for the billing of multiple individual units in the context of measuring energy consumption in water heating (Col. 2 – 5). It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Saar in order to obtain a more economical method of measuring and billing for electricity.

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4. Claims 2 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031) in view of Saar (US 6,161,100). Kincheloe discloses a method of remotely monitoring the consumption and use of a utility, allowing for calculating billing data using metering data and generating bills (Col. 1 – 2). Kincheloe does not, however, disclose a method of monitoring multiple consumer sites. Saar, however, does disclose a system specifically for the billing of multiple individual units in the context of measuring energy consumption in water heating (Col. 2 – 5). It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Saar in order to obtain a more economical method of measuring and billing for electricity.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031) in view of Saar (US 6,161,100) as applied to claim 1 above, and further in view of Crooks et al (US 5,943,656). Kincheloe discloses a method of remotely monitoring the consumption and use of a utility, allowing for calculating billing data using metering data and generating bills (Col. 1 – 2). Saar discloses a system specifically for the billing of multiple individual units in the context of measuring energy consumption in water heating (Col. 2 – 5). Kincheloe does not, however teach a method for secure bill payment via the Internet. Crooks, however, does disclose a method for a multi-user internet interface for secure bill payment (Col. 3). It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe, Saar, and Crooks in order to obtain a more efficient method of measuring, billing and receiving payments for electricity.

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6. Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031) in view of Saar (US 6,161,100). Kincheloe discloses a method for reducing utility costs at a remote facility associated with an utility consumer, the method comprising the steps of receiving consumption information at a data processing system from a meter located at said remote facility (Col 2 ln 2 –55); receiving price factors at said data processing system (Col 2 ln 2 –55); calculating utility cost at said data processing system as a function of said consumption information and of said price factors (Col 2 ln 2 –55); and providing said utility cost from said data processing system to said utility consumer such that said utility consumer is allowed to thereby manage said utility cost for said remote facility (Col 2 ln 2 –55); wherein said pricing options comprise a plurality of pricing factors, each of said plurality of pricing factors affecting a portion of said utility cost (Col 2 ln 2 –55); wherein said plurality of pricing factors comprise generation costs (Col 2 ln 2 –55); wherein said method is executed in real-time (Col 2 ln 2 –55); further comprising the step of providing billing information to said utility consumer from said data processing system (Col 2 ln 2 –55). Kincheloe does not, however teach the method of claim 21, above, further comprising the step of receiving payment information from said utility customer at said data processing system. Crooks, however does disclose the step of receiving payment information from said utility customer at said data processing system (Col. 3 ln 22- 57). It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Crooks in order to obtain a more efficient method of measuring, billing and receiving payments for electricity.

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7. Claims 27 - 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031). Kincheloe discloses a data processing system for managing energy consumption at a facility affiliated with an energy consumer, the system being coupled to a communications medium, wherein said data processing system is configured to receive metering information via said digital network from a meter located at said facility, to determine utility cost as a function of said metering information, and to transmit said utility cost to said energy consumer via said communications medium such that said utility consumer thereby manages said utility cost for said facility (Col 2 ln 2 –55); wherein said utility cost is further computed as a function of price factors received via said communications medium (Col 2 ln 2 –55); wherein said price factors comprise a first option from a first energy source and a second option from a second energy source (Col 2 ln 2 –55); wherein said energy consumer evaluates said utility cost to thereby manage energy consumption at said facility (Col 2 ln 2 –55); wherein said metering data and said pricing options are provided in real-time (Col 2 ln 2 –55); wherein said data processing system is further configured to provide a billing statement to said utility customer (Col 2 ln 2 –55).

8. Kincheloe does not, however teach the method of claim 27, above, wherein said data processing system is further configured to receive payment information from said utility customer. (Crooks Col. 3 ln 22- 57). Crooks, however, does, as noted above. It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Crooks in order to obtain a more efficient method of measuring, billing and receiving payments for electricity.

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9. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031). Kincheloe teaches a system for providing energy consumption data for a facility affiliated with an energy consumer, the system comprising a receiving means configured to receive metering data from a meter located at said facility via a digital network (Col 2 In 2 –55); a processing means in communication with said receiving means, wherein said processing means is configured to determine pricing options as a function of said metering information and of pricing factors affiliated with an energy source (Col 2 In 2 –55).

10. Kincheloe does not, however teach the method of claim 34, above, further comprising a transmitting means configured to transmit said pricing options to said energy consumer via said digital network such that said energy consumer is allowed to evaluate said pricing options to thereby manage energy consumption at said facility (Crooks Col. 3 In 22- 57). Crooks, however, does, as noted above. It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Crooks in order to obtain a more efficient method of measuring, billing and receiving payments for electricity.

11. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031). Kincheloe teaches a system for providing energy consumption data for a facility affiliated with an energy consumer, the system comprising an interface to a digital network, said interface being configured to receive metering data from a meter located at said facility (Col 2 In 2 –55); and a processor in communication with said interface, wherein said processor is operable to determine

pricing options as a function of said metering information and of pricing factors affiliated with a plurality of energy sources (Col 2 In 2 –55).

Kincheloe does not, however teach the method of claim 35, above, with the further step of transmitting said pricing options to said energy consumer via said interface such that said energy consumer is allowed to thereby manage energy consumption at said facility based upon said pricing options. (Crooks Col. 3 In 22- 57). Crooks, however, does, as noted above. It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Crooks in order to obtain a more efficient method of measuring, billing and receiving payments for electricity.

12. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031) in view of Saar (US 6,161,100). Kincheloe discloses a method of remotely monitoring the consumption and use of a utility, allowing for calculating billing data using metering data and generating bills (Col 2 In 2 –55). Kincheloe does not, however, disclose a method of monitoring multiple consumer sites. Saar, however, does disclose a system specifically for the billing of multiple individual units in the context of measuring energy consumption in water heating (Col. 2 In 2 - 58). It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Saar in order to obtain a more economical method of measuring and billing for electricity.

13. Claims 36 - 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincheloe et al (US 4,120,031) in view of Saar (US 6,161,100). Kincheloe discloses a method for reducing utility costs at a remote facility associated with an utility consumer,



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the method comprising the steps of receiving consumption information at a data processing system from a meter located at said remote facility (Col 2 In 2 –55); receiving price factors at said data processing system (Col 2 In 2 –55); calculating utility cost at said data processing system as a function of said consumption information and of said price factors (Col 2 In 2 –55); and providing said utility cost from said data processing system to said utility consumer such that said utility consumer is allowed to thereby manage said utility cost for said remote facility (Col 2 In 2 –55); wherein said pricing options comprise a plurality of pricing factors, each of said plurality of pricing factors affecting a portion of said utility cost (Col 2 In 2 –55); wherein said plurality of pricing factors comprise generation costs (Col 2 In 2 –55); wherein said method is executed in real-time (Col 2 In 2 –55); further comprising the step of providing billing information **to said utility consumer from** said data processing system (Col 2 In 2 – 55). Kincheloe does not, however teach the method of claim 21, above, further comprising the step of receiving payment information from said utility customer at said data processing system. Crooks, however does disclose the step of receiving payment information from said utility customer at said data processing system (Col. 3 In 22- 57). It would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe and Crooks in order to obtain a more efficient method of measuring, billing and receiving payments for electricity.

### ***Response to Arguments***

14. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re* In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

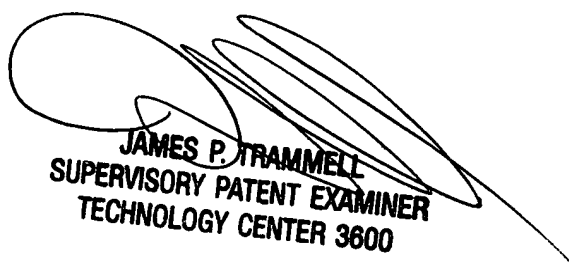
### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cristina Owen Sherr, whose telephone number is (703) 305-0625. The Examiner can normally be reached on Mondays through Fridays from 8:30 AM – 5:00 PM.

16. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James Trammell, can be reached at (703) 305-9768. The FAX phone number for this group is (703) 305-7687.

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17. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist, whose telephone number is (703) 305-3900.



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